criticisms of the defence are justifiable, there is no doubt that the amount of heroin was more than 15g as it was impossible for Dr Chow and his technicians, who had used reliable techniques and reliable instruments to do the analysis, could have erred to the extent of 24.07%.

In our view, the DPP's argument cannot even be proved by the application of mathematical probability as there is no evidence as to the probabilities of Dr Chow making an error of this magnitude. Furthermore, if the pulverized exhibits were not homogeneous and the taking of three samples with a total weight of 0.466g, *assuming* that they were taken randomly (as to which there is no satisfactory evidence), was not representative of the bulk, why should not the error be more than 24.07% in a case where we are dealing with small amounts of a powdery substance? The fact is no one knows the answer even as a matter of probability in the mathematical sense.

In *Miller* v *Minister of Pensions*,[10] Lord Denning attempted to define the expression 'without any reasonable doubt' in this way:

> If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice.

For the reasons we have given, we are unable to say that there is only a remote possibility in favour of the accused in the instant case. In *R* v *Van Beelan*,[11] the Full Court of the Supreme Court said:

> It is not easy to find direct authority for what may seem to be an obvious proposition in logic, that you cannot be satisfied beyond reasonable doubt of the truth of an inference drawn from facts about the existence of which you are in doubt.

The difficulty here is not with inferring the existence of heroin but with its quantity. There is no fact on which the court can draw an inference that the quantity was more than 15g but less than 18.77/18.67/18.61g except by inferring that there was no probability of Dr Chow and his team of technicians making an error of 24.07%. But, if the question is asked, 'Why not?', we think that it is un-answerable by reference to any fact, logic or mathe-matical probability.

In the circumstances of the present case, we have decided that the proper course for this court to take is not to accept the suggestion of counsel for the accused as it lacks both logic and rationality, but to apply the principle that where the court is, on the evidence, left in doubt as to whether the accused has committed an offence in a lower or a higher degree of seriousness, the court should make a finding in the lower degree, particularly in a case in which a finding in a higher degree will give rise to a mandatory sentence of death. Accordingly, we find the accused guilty of trafficking in not less than 10g and not more than 15g of heroin at the time and date stated in the charge. We convict him accordingly.

Order accordingly.

Solicitors: *Low Yeap & Co.*

Reported by *S Surenthiraraj*

Chye Seng Huat Construction Pte Ltd v Goh Chin Soon & Ors

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 943 OF 1989
WEE CHONG JIN CJ
26 SEPTEMBER 1990

Land Law — Agreement for sale and purchase of property — Option — Sale subject to purchaser obtaining in-principle approval from relevant government authority within eight weeks of date of option — Approval not obtained — Whether purchaser could waive condition for the obtaining of approval — Whether vendor could unilaterally rescind contract — Whether vendor had to give reasonable notice before rescinding contract

Contract — Option for purchase of property — Construction of terms of option — Whether vendor could rescind contract unilaterally — Whether vendor had to give reasonable notice before rescinding contract

The respondents were the vendors ('the vendors') of a piece of property ('the property') who had granted an option to the applicant ('the purchaser') to purchase the property. The option provided, inter alia, that the sale was subject to the purchaser obtaining in-principle approval to construct three units of two-storey bungalows on the property by the end of the eighth week from the date of the option, and if such approval was not granted by then, the purchaser would have the option to give the vendors written notice to call off the sale and purchase. If the purchaser did not give the written notice as aforesaid, the vendors could forfeit the deposit and have the discretion to abort the sale or to consent to the purchaser proceeding with the sale.

The purchaser's solicitors wrote to the vendors' solicitors on 10 May 1989 stating, inter alia, that the application for the proposed erection of three units of two-storey bungalows had been rejected, and that the purchasers were prepared to enter into fresh negotiation for the purchase of the property at a reduced price. The eight-week period specified for the obtaining of the in-principle approval expired without such approval being granted. Subsequently, the vendors exercised their right to abort the sale.

The purchaser filed the originating summons asking for, inter alia, that the vendors were not entitled to abort the sale and that the option was subsisting and binding on the parties. The purchaser's solicitors argued that:

(i) the provision for in-principle planning permission to be granted at the end of the eight-week period was for the purchaser's benefit, and which condition he was therefore entitled to waive;

(ii) on the expiry of the eight-week period there was a concluded contract between the vendors and the purchaser which the vendors were not entitled to abort unilaterally, and in any event, the vendors could only abort the sale upon giving reasonable notice.

(iii) the vendors' conduct was not bona fide and the vendors knew at the date of the option that their previous application for planning permission for three units of two-storey bungalows had been rejected and that the purchaser's application for planning permission was bound to be rejected.

Held, dismissing the purchaser's application:

(1) There was no factual foundation for the contention that there was or could be a waiver of the stipulation for planning approval. It was plain from the terms of the purchaser's solicitors' letter dated 10 May 1989 that the purchaser never intended to waive the stipulation for planning approval. In any event, the in-principle planning approval had not been obtained within the eight-week period and the purchaser had not chosen to affirm the contract. Even if there was a waiver it was not effected before the expiry of the eight-week period or before the vendors aborted the sale.

(2) The express terms of the option made it clear that if the in-principle approval was not obtained within the eight-week period, the purchaser had the first option to abort the contract and thereafter the vendors had a discretion to abort the contract or to allow the purchaser to proceed with the contract. It was clear from the terms that the vendors had a power of rescission if the purchaser failed to give the requisite notice to call off the sale.

(3) There was no requirement that the vendors had to give reasonable notice before they decided to abort the sale, either on a reading of terms of the option or under the Law Society's Conditions of Sale 1981.

(4) Even if there was any pre-contract misrepresentation by the vendors (the court made no finding to this point), that did not alter the fact that the contract had been aborted in accordance with express terms of the contract. The purchaser's remedy, if any, may lie in damages only.

[*Editorial Note:* The purchaser has appealed to the Court of Appeal vide Civil Appeal No 96 of 1990.]

Case referred to

1 *Heron Garage Properties Ltd* v *Moss* [1974] 1 All ER 421 (distd)

TPB Menon for the purchaser.
Quek Mong Hua for the respondents.

Cur Adv Vult

Wee Chong Jin CJ: By an option dated 25 March 1989, the respondents (vendors) in consideration of $50,000 received from the applicant (purchaser) granted an option to the purchaser to purchase the land at Holland Road/East Sussex Lane, Singapore known as lot 1951 mukim 4 ('the land') at the price of $3,030,000. The option provided, inter alia, that:

(a) the option shall be exercised within 14 days of the date thereof;

(b) the sale is subject to the Singapore Law Society's Conditions of Sale 1981 in so far as the same are applicable to a sale by private treaty and are not varied by or inconsistent with the terms and conditions hereinafter mentioned (cl 2);

(c) the sale shall be completed within three months from the date of the option (that is, on 24 June 1989) (cl 5);

(d) the sale is subject to satisfactory replies being received by the purchaser's solicitors to the requisitions to the usual government departments. If any of the replies to the requisitions is unsatisfactory, the purchaser may annul the sale in which event the vendors shall forthwith refund all moneys paid by the purchaser to the vendors. If replies to such a requisitions are not received within eight weeks from the date of the option, then such requisitions shall be deemed to be satisfactory;

(e) the sale is subject to the purchaser obtaining in-principle approval to construct three units of two-storey bungalows on the land from the relevant government authority (cl 9(1)); the purchaser shall within four weeks from the date of option submit the application for the said in-principle approval to the relevant government authority;

(f) 'it is expressly agreed between the vendors and the purchaser that in the event that by the end of eight weeks from the date of this option, written in-principle planning approval for development of three units of two-storey bungalows on the said property is not granted by the relevant government authority to the purchaser or if there is no reply received by the purchaser from the relevant government authority concerning the said in-principle approval application, then the purchaser shall have the option to give the vendors seven days' written notice to call off the sale and purchase and in that event, an agreed sum of Singapore dollars thirty thousand ($30,000) shall be forfeited by the vendors as agreed damages and the vendors shall refund the balance deposit amounting to Singapore dollars two hundred and seventy-three thousand ($273,000) without interest to the purchaser and thereafter neither party shall have any claim or lien against the other. If the purchaser did not give the seven days' written notice as aforementioned to the vendors, then the vendors shall after forfeiting the sum of $30,000 have the discretion to either abort the sale and purchase of the said property or to consent to the purchaser proceeding with the sale based on the terms and conditions of this option.' (cl 13).

The purchaser exercised the option on 8 April 1989 by paying the balance of the 10% deposit of $253,000. The purchaser submitted plans for in-principle planning approval to construct three two-storey bungalows on the land to the relevant authority and informed the respondent on 20 April 1989 accordingly.

On 2 May 1989 the purchaser's solicitors received a reply from the Chief Planner, Planning Department to their legal requisition.

As a result of the Chief Planner's reply the purchaser's solicitors wrote a letter dated 10 May 1989 to the vendors' solicitors which reads:

> Re: Lot 1951 mukim 4
> Holland Rise/East Sussex Lane
>
> We refer to the above matter.
>
> We have received the reply to our legal requisition to the Chief Planner (xerox copy attached) and are surprised to note that an application for the 'proposed erection of three units of three-storey detached dwelling houses with common properties' was refused on 27 February 1987 on the ground that the 'site is located in a good class bungalow area where only bungalow developments on minimum plot sizes of 1,400 sq m are allowed as approved previously'.
>
> It is clear from the reply by the Chief Planner that:
> (a) an original application was made for the erection of two detached houses on the land which was approved;
> (b) a subsequent application for three detached houses was refused on 29 February 1987.
>
> At the time of negotiations (before the option was exercised) your client Goh Chin Soon @ Ricky Goh informed our clients that at the time of their purchase there was approval for the erection of two detached houses and that your clients had not at any time submitted any application for the erection of three detached houses on the land. Our clients exercised the option on the express representation made by your clients aforesaid and our clients reserve their right to rescind the contract created by the exercise of the option and to claim from your clients the refund of the 10% deposit including all architects and survey fees, fees paid to the government and all legal expenses incurred by our clients in the event that their application for planning permission for three detached houses be turned down.
>
> Strictly without prejudice to our clients' rights herein our clients are prepared to enter into fresh negotiations with your clients to purchase the above property at a reduced price based on the approval for two detached houses. Please take your clients' instructions and let us hear from you.

On 20 May 1989 the eight-week period specified in cl 13 of the option for obtaining in-principle planning approval for development of three units of two-storey bungalows on the property expired without such approval having been granted.

On 23 May 1989, the vendors' solicitors wrote to the purchaser's solicitors asking them to 'confirm that your letter dated 10 May 1989 amounts to a notice under Cl 13 of the option dated 15 March 1989'. There was no reply to this letter.

On 27 May 1989 the option which the purchaser had, under cl 13, to call off the sale expired.

By letter dated 6 June 1989, the vendors through their solicitors exercised their right under cl 13 to abort the sale in these terms:

> Clause 13 of the option dated 25 March 1989 refers.
>
> In view of the fact that your clients have not within the stipulated time given our clients the relevant notice, we have instructions that our clients shall forfeit the sum of $30,000 from the deposit paid by your clients. We are further instructed to give your client notice that the sale and purchase of the above property be hereby aborted.

On 27 September 1989, the purchaser filed the present originating summons, asking for the following reliefs:

(1) a declaration that the vendors are not entitled to abort the sale under cl 13 of the option;
(2) a declaration that the notice dated 6 June 1989 issued by the vendors' solicitor is invalid and of no legal effect;
(3) a declaration that the contract created by the exercise of the option on 8 April 1989 between the vendors and the purchaser is subsisting and binding on the parties.

The sole issue for determination in this originating summons is whether, on the true construction of cl 13, the vendors were entitled to abort the sale. Counsel for the purchaser advanced a number of submissions in support of the contention that the vendors were not so entitled.

Position on the exercise of the option

It is submitted on behalf of the purchaser that the purchaser was entitled to proceed with the sale notwithstanding the fact that the approval for in-principle planning permission was not granted at the end of the eight weeks since the provision for planning approval was for the applicant's benefit which he was entitled to waive. In *Heron Garage Properties Ltd* v *Moss*[1] at p 426, Brightman J stated that in the absence of any express contractual right, waiver will in general be allowed only where the stipulation is: (a) in terms for his exclusive benefit because it is a power or right vested by the contract in him alone; or (b) by inevitable implication for his benefit alone.

I cannot accede to the submission. On the facts of the present case, there is no factual foundation for the contention that there was or could be a waiver of the stipulation for planning approval. It is plain from the terms of the letter dated 10 May 1989, that the purchaser never intended to waive the stipulation for planning approval. In any event, by 27 May 1989, in-principle planning approval had not been obtained and the purchaser had not chosen to affirm the contract, despite the vendors' solicitor's letter dated 23 May 1989.

Secondly, even if there was a waiver, it was not effected before the expiry of the eight weeks fixed for the obtaining of the planning approval, or at any rate, before the vendors aborted the sale.

Position on expiry of eight weeks of the option

It is submitted on behalf of the purchaser that on the expiry of the eight weeks from the date of the option, there was a concluded contract between the vendors and purchaser which the vendors were not entitled to abort unilaterally. It was maintained that such a contract can only be aborted if both parties mutually agree to put an end to the contract.

This submission is, in my judgment, erroneous. On its true construction, cl 13 renders the contract conditional upon the purchaser obtaining written in-principle planning approval for development of three units of two-storey bungalows within eight weeks from the date of the option, failing which the purchaser has the first option to abort the contract by giving seven days' notice and thereafter, the vendors shall have the discretion to abort the contract or to consent to the purchaser proceeding with the contract. In my judgment, cl 13 clearly confers a power of rescission on the vendors if the purchaser fails to give the requisite notice to call off the sale.

It is next submitted that the vendors could only abort the sale by giving reasonable notice. It was submitted that reasonable notice meant reasonable notice as provided in the Law Society's Conditions of Sale 1981 which had been made applicable to the sale and which meant 21 days' notice, and not a notice to abort forthwith.

This submission is, in my judgment, fallacious. It requires a reading into the last sentence of cl 13 the words 'reasonable notice' before the vendors can abort the sale, which words are notably absent. In any event, there is no relevant provision in the Law Society's Conditions of Sale 1981, which states 21 days' notice must be given to abort the sale. Clause 29(6) of the Law Society's Conditions, which provide for 21 days' notice, does not apply to the present situation as it deals only with the notice to complete when the sale has not been completed by the date fixed for completion. The contract here was aborted before the date fixed for completion.

The vendors' conduct

It is also submitted on the facts that the vendors' conduct was not bona fide and was in fact reckless in that the vendors knew at the date of granting of the option that their application for planning permission for three bungalows had been rejected earlier on February 1987 and thus knew that approval for planning permission was bound to be rejected. The vendors, for their part, maintained that they had informed the purchaser's representatives that 'in-principle approval' for only two bungalow houses had been obtained and wanted the sale to be on that basis, but it was the purchaser who had insisted on making the contract subject to in-principle approval for three bungalows which they said they, as developers, were confident of having a fair chance of obtaining. This resulted in what was in fact an extended option of eight weeks to await the outcome of the application for in-principle approval. In any event, even if there was any pre-contract misrepresentation, it does not, in my view, alter the fact that the contract has been aborted in accordance with the express terms of the contract. The purchaser's remedy, if such a situation exists, may lie in damages only.

Accordingly, for these reasons, the originating summons is dismissed with costs.

Application dismissed.

Solicitors: *Wee Swee Teow & Co; Lee & Lee.*

Reported by *Teoh Ai Lin*

Re Wan Yijun & Anor

HIGH COURT (SINGAPORE) — ADOPTION PETITION NOS 51 AND 52 of 1989
WEE CHONG JIN CJ
25 SEPTEMBER 1990

Family Law — Adoption — Consent of natural mother to adoption originally given then revoked — Allegation that natural mother was unfit to look after children — Whether court can dispense with natural mother's consent — Welfare principle — Whether natural mother or petitioners were fit to have care and control of children — Adoption of Children Act (Cap 4, 1985 Ed), ss 4(4) proviso (a), (b), (c), 5(a) & (b)

Children and Young Persons — Adoption — Consent of natural mother to adoption originally given then revoked — Allegation that natural mother was unfit to look after children — Whether court can dispense with natural mother's consent — Welfare principle — Whether natural mother or petitioners were fit to have care and control of children — Adoption of Children Act (Cap 4, 1985 Ed), ss 4(4) proviso (a), (b), (c), 5(a) & (b)

The male petitioner, being the natural father of twin girls, and his wife applied for an adoption order in respect of the girls. The children were born to the respondent, the natural mother, out of a previous relationship with the male petitioner. Custody of the twins was originally vested in the natural mother, with the male petitioner paying for their maintenance. Later the natural mother agreed to let the male petitioner adopt the twins while she was to have access and the sum of $200,000. A deed of severance of cohabitation and two consents to adoption were signed by the parties. The twins were handed over to the male petitioner and adoption papers filed. The natural mother then withdrew her consent for adoption, and regained custody of the twins upon commencing a separate action. When cane marks and bruises were found on the twins resulting in their hospitalization, the male petitioner applied for and was granted custody. As the adoption proceedings reached a stalemate without the natural mother's consent, the petitioners argued that the court had jurisdiction to dispense